

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 96 of 1997

in

SPECIAL CIVIL APPLICATION No 8044 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SHARDAGURI VASANTRAI SHETH

Appearance:

GOVERNMENT PLEADER for Petitioners

MR SB VAKIL for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 10/09/97

ORAL JUDGEMENT

Admitted. Mr.S.B.Vakil for Mr.A.S.Vakil, appears and waives service of notice of admission on behalf of the respondent-original petitioner.

This appeal is filed against the judgment and

order passed by the learned Single Judge on November 2, 1996 in Special Civil Application No. 8044 of 1996. That petition was filed by respondent-original petitioner. The petition was disposed of by the learned Single Judge and in para 5 following directions have been issued.

"5. In view of the matter, the petition is partly allowed and the order of the competent authority passed on 4.11.1984 the copy of which is produced at Annexure.C and consequent order of the Urban Land Tribunal, Ahmedabad passed on 10.10.1988 the copy of which is produced at Annexure.D are quashed and set aside so far as the name it relate to the land Survey Nos.31 and 32 situated within local limits of village Nanamuva. The Form is referred back to the competent authority to consider afresh, keeping in mind the above stated four units and make computation again qua survey Nos. 31 and 32 and pass appropriate order after hearing the petitioner and also undergoing necessary formalities filling up other forms. Each of four family members mentioned in para 2 of the petition shall also fill up the form. The competent authority shall decide the applications as directed hereinabove at the earliest. No order as to costs in the circumstances of the case. Rule is made absolute to the aforesaid extent."

Mr.Sompura, learned Assistant Government Pleader contended that while remanding the matter, the learned Single Judge recorded a finding that there were four family members who were major and their claims ought not to have been ignored. He contended that even if it is held that the order of remand could not be said to be illegal or contrary to law, the learned single Judge ought to have remanded the matter by giving direction to the authority to decide the matter in accordance with law. Mr.Sompura further submitted that as findings are recorded by the learned Single Judge and direction is issued to the authority, the authority will have no power to appreciate the facts and circumstances of the case to come to his own conclusion.

Mr.S.B.Vakil, contended that such a direction can be issued by the learned Single Judge. He, however, stated that he has no objection if the matter is remanded in its entirety in view of the fact that if the matter will be admitted, it will take time.

Considering the facts and circumstances of the case and fair attitude on the part of the learned counsel for the respondent, the order passed by the learned Single Judge remanding the matter is not disturbed. It is, however, clarified that the authority will decide all the questions and will record his own finding in accordance with law, on merits, without being influenced by the observations of the learned Single Judge as well as observations made by us. The appeal is partly allowed. The authority will now consider the case in accordance with law taking into account the forms submitted by the original petitioner. Since the matter is old, the competent authority will decide the same as expeditiously as possible. Appeal is accordingly disposed of. No order as to costs.

Dt. 10.9.1997. (C.K.THAKKER J.)

(S.D.PANDIT J.)